



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33769918

Date: OCT. 24, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a computer software business, seeks to classify the Beneficiary, a senior director of professional services, as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established the Beneficiary has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded the Beneficiary fulfilled only two – judging under 8 C.F.R. § 204.5(h)(3)(iv) and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner maintains the Beneficiary’s qualification for four further criteria. Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). For the reasons discussed below, the Petitioner did not demonstrate the Beneficiary meets at least three categories of evidence.

A. Evidentiary Criteria

Documentation of the individual’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner argues that the Beneficiary meets this criterion based on: (1) his membership on the Advisory Board for the Customer Experience Certificate Program at [REDACTED] Division of Continuing Education; and (2) his membership on the Advisory Board for the Digital Marketing Executive Education Program at the [REDACTED] USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.¹ The petitioner must show that membership in the association requires

¹ *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual>.

outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.²

The record contains membership invitation letters from [redacted] dated, respectively, 2021 and 2022, which indicate the Beneficiary's acceptance by initialing and signing. The letters use identical language to state that "[m]embership on the board is by invitation only and is based upon [the Beneficiary's] personal and professional accomplishments." In addition, the letters provide that "[t]he board is comprised of a diverse, innovative, and extremely well-connected network of top executives."³

Further, as it relates to [redacted] Customer Experience Certificate Program Advisory Board, the Petitioner provided screenshots from the organization's website that indicate that "[e]xecutives around the nation are hand-picked for the board to provide students an exclusive group of individuals with diverse industry backgrounds to offer different points of view and distinctive leadership qualities, making up a team of accomplished experts who offer innovative advice and dynamic perspectives in their area of focus." However, based on the above limited descriptions of the membership criteria of these advisory boards, they do not appear to involve additional requirements or substantive review by national or international experts to determine whether a given applicant has demonstrated outstanding achievements.

On appeal, the Petitioner states that membership on the above advisory boards "are only open via express invitation from experts and professors within these top tier universities," but this statement was not supported by the information provided in the record. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Counsel's statements must be substantiated in the record with independent evidence. The record does not establish that the Beneficiary's membership on the [redacted] Customer Experience Certificate Program Advisory Board or the [redacted] Digital Marketing Executive Education Program Advisory Board satisfies this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner claims eligibility for this criterion based on an interview of the Beneficiary on The Agile Brand Podcast with Greg Kihlstrom. In order to fulfill this criterion, the Petitioner must demonstrate published material about the Beneficiary in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁴ In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant

² *Id.*

³ Further, the letters indicate that members must attend at three board meetings per year, provide feedback on the program's effectiveness, and register oneself or a colleague for the class with a provided discount, and may participate as a speaker, mentor, or panelist.

⁴ *See also 6 USCIS Policy Manual, supra*, at F.2(B)(1).

factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).

Regarding the interview, the Petitioner provided a transcript of the podcast interview titled, [REDACTED] posted on the website Gregkihlstrom.com. The Petitioner, however, did not include the regulatorily required date and author of the material. In addition, the Petitioner did not demonstrate, as claimed, that The Agile Brand Podcast enjoys standing as a major trade publication or other major medium, nor did the Petitioner offer evidence relating to Gregkihlstrom.com. At initial filing, in response to the Director's request for evidence (RFE), and on appeal, the Petitioner referenced information contained in a screenshot it initially submitted from the Gregkihlstrom.com website that the podcast is "[t]he leading marketing technology podcast" and has more than 2 million downloads, and a letter from Mr. Kihlstrom asserting the podcast "has garnered more than 1.5 million downloads."

Although the Petitioner asserts on appeal that "this podcast qualifies as a major trade publication or some other form of major media," it has not provided independent and objective evidence to support its claim of major audio coverage. As stated, counsel's unsubstantiated assertions do not constitute evidence. Nor will we rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of a major medium). Even if we were to accept Mr. Kihlstrom's information, the Petitioner did not provide further evidence or information demonstrating the significance or relevance of the provided download figures to establish that the interview venue represents "a major trade publication or some other form of major media." Therefore, we need not address the Petitioner's arguments relating to whether the evidence qualifies as published material about the Beneficiary relating to his work in the field.

For the reasons discussed above, the Petitioner did not show that the Beneficiary meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner maintains that the Beneficiary has made original contributions of major significance in the field of strategic management of Customer Experience Management (CEM) and Employee Experience Management (EEM) technology development and engagement, in his role within the petitioning company. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), USCIS determines whether the person has made original contributions in the field.⁵ USCIS then determines whether the original contributions are of major significance to the field.⁶ Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the person's original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.⁷ The Director

⁵ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁶ *Id.*

⁷ *Id.*

found that the documentation submitted does not show that the significance of the Beneficiary's contributions rise to a level of major significance in the field of CEM and EEM technology development and engagement.

On appeal, the Petitioner asserts it has demonstrated that the Beneficiary's work developing and managing its [redacted] program and partnership ecosystem has led to decreased deployment costs and increased customer engagement and company revenue. The Petitioner contends these contributions were critical to the Petitioner's 2019 IPO, its 2021 acquisition by [redacted] and its 2022 acquisition of [redacted]. In addition, it argues that the submitted letters show that the Beneficiary's contributions have "influence beyond his employers, clients or customers," because his work for major corporate clients such as [redacted] has resulted in the expansion of the Petitioner's technologies and offerings to these corporations' own customer/clients.

The evidence referenced by the Petitioner, such as recommendation letters,⁸ indicates the Beneficiary's involvement in the Petitioner's projects with major corporate clients. However, the evidence does not show that such involvement rises to a level of major significance in the field. The significance of the Beneficiary's contributions has been limited to the projects in which the petitioning company conducted business rather than impacting or influencing the overall field in a major way. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

For instance, the Petitioner provided letters from several of its own clients. P-S-, a vice president at the management consulting company [redacted] states that his work with the Beneficiary's team converting [redacted] proprietary [redacted] solution into an application on the Petitioner's app development platform had "a substantial impact on multiple clients," including an American manufacturer of secure identity products and a German telecommunications company. N-M-, a vice president at the chemical company [redacted] provides that the Beneficiary played "a pivotal role in the successful implementation of [the Petitioner's] Customer Experience Management software" for [redacted] in collaboration with [redacted]. He asserts that the Beneficiary's contributions to this project resulted in an 18.5% increase in [redacted] (a measure of customer loyalty and satisfaction), made "a measurable impact on [redacted] global business," and "significantly influenced how [the Petitioner's] [redacted] and related technologies are perceived and utilized by . . . our customers, clients, and competitors." Although the authors of the letters highly praise the projects in which they worked with the Beneficiary, they do not further elaborate and explain how those engagements translated into contributions of major significance in the field.

In addition, while letters from representatives of the petitioning organization highly praise the Beneficiary's work in his position as a strategic management executive and on behalf of various customers, they do not explain how his contributions have been majorly significant in the field. Further, some of the letters make broad claims regarding his work. For instance, N-B-, the Beneficiary's direct manager, credits him with the development of the Petitioner's [redacted]

⁸ While we discuss a sampling of letters, we have reviewed and considered each one in the record.

[redacted];⁹ development of its Partner Relationship Management system that saved it “hundreds of thousands of dollars in 3rd party software cost;” deployment of [redacted] App and [redacted] powered by the Petitioner’s app and proprietary app development platform which “are critical towards enabling our wide partner ecosystem to leverage the entire spread of [the Petitioner’s] advanced technologies; and contribution to the Petitioner’s acquisition of [redacted] a Mexican customer experience consulting firm, for implementation of the Petitioner’s [redacted]. He asserts that the Beneficiary’s work “was very critical to [the Petitioner’s] recent acquisition by [redacted] 2021.”

J-D-, the Petitioner’s executive vice president and chief customer officer, provides that initiatives the Beneficiary developed for optimizing revenues and regional profitability for the Petitioner’s East Coast Professional Services division were later used to drive similar improvements in profitability for the Petitioner’s Professional Services as a whole, which were critical to the company’s continued growth before and after its 2019 IPO. Further, he claims that “[o]ver 1000 companies from across the globe now subscribe to and utilize [the Petitioner’s] SaaS products and services he has supported here” and that “[the Petitioner] and third party businesses built on and around [the Petitioner’s] platform now employ several thousand employees, further illustrating [the Beneficiary’s] leading positive impact on his fields and the SaaS sector as a whole.” T-K-, the Petitioner’s former general manager and vice president of the East Coast business, states that “the Beneficiary’s original contributions in driving up the margins on the business through development of new enterprise-wide initiatives and best practices, working on multi-market accounts, and leveraging our Partner ecosystem through custom designed CEM SaaS solutions and applications of [the Petitioner’s] platform all have made a major significant positive impact on the field of [CEM] and [EEM] technologies as a whole.”

As evidenced above, the letters reflect how much the petitioning employer values the Beneficiary’s contributions to its company. However, the letters do not explain what the Beneficiary has contributed in the field and how those contributions are considered to be of major significance in the field. In addition, the letters make general claims and point to the Beneficiary’s impact on the individual companies rather than on the overall field. *See Visinscaia*, 4 F. Supp. 3d at 134-35. Moreover, the letters do not articulate how the Beneficiary’s performance in his roles at the petitioning company somehow influenced or affected the field in a significantly major manner.

Detailed letters from experts in the field explaining the nature and significance of the person’s contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.¹⁰ Submitted letters should specifically describe the person’s contribution and its significance to the field and should also set forth the basis of the writer’s knowledge and expertise.¹¹ In this case, the letters lack specific, detailed information explaining how the Beneficiary has made original contributions of major significance in the field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

⁹ In addition, although N-B- claims the Petitioner’s [redacted] is “a product offering that has billions of dollars’ worth of addressable market potential,” the fact that the program may impact the field at some point in the future does not demonstrate that the current impact of the Beneficiary’s work rises to a level of “major significance” as required.

¹⁰ *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹¹ *Id.*

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that the Beneficiary has made original contributions of major significance in the field.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner states that the Beneficiary qualifies for this criterion based on the pay he received with the petitioning company in 2021 and 2022. The Director found insufficient evidence to establish that the Beneficiary earned a high salary or other significantly high remuneration. USCIS determines whether the person's salary or remuneration is high relative to the compensation paid to others working in the field.¹² According to Form I-140, Immigrant Petition for Alien Workers, the Petitioner indicated the Beneficiary's proposed job title as "Senior Director, Professional Services," and his annual salary as \$219,300.¹³ In the initial cover letter, the Petitioner indicated it promoted the Beneficiary to his current position in November 2021 and that he also receives "generous stock and performance bonus incentives."¹⁴ The record reflects that the Beneficiary received total compensation of \$695,372 in 2021 and \$382,135 in 2022.

The Petitioner argues it satisfies this criterion based upon submitted data from Glassdoor.com and Indeed.com that indicates that the range of base salaries for senior directors (all industries) in the Beneficiary's geographic area [redacted] California) with 7 to 9 years of experience is \$152,000 to \$215,000; the material from Indeed.com shows the high base salary for a senior director in the geographic area is \$300,991. The wage information provided by Glassdoor and Indeed does not provide a description of the "senior director" occupation and specifies that "all industries" were included in the survey. Broad descriptions that include multiple occupations or multiple industries may not provide an accurate comparison to others in the field. *See generally*, 6 USCIS Policy Manual, *supra*, at F.2(B)(1).¹⁵ The Petitioner has not demonstrated that the salary for "senior director (all industries)" is an appropriate basis for comparison.

In addition, the Petitioner contends that it meets this criterion based on salary data it provided for computer and information system managers. Data from the Department of Labor's Foreign Labor Certification (FLC) Data Center indicates that computer and information system managers in the Beneficiary's geographic area earn a Level 4 Wage (fully competent) of \$250,286. Occupational Employment and Wage Statistics for computer and information systems managers from the Bureau of Labor Statistics (BLS) shows a 90th percentile wage of \$239,200 for the United States. Further, within its RFE response, the Petitioner provided information from Glassdoor.com and Indeed.com showing base salaries for computer and information system managers in the Beneficiary's geographic area.

¹² *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹³ The Petitioner has employed the Beneficiary on an H1B (specialty occupation) visa since December 2014.

¹⁴ The Petitioner's initial letter described the Beneficiary's job duties as including: build, optimize and enhance software solutions; manage teams of technical analysts working with enterprise grade database management systems; lead a complex software implementation program; lead design discussions with clients for Enterprise grade technology deployments; direct management and leadership of a Professional Services team to include recruiting, hiring, development, performance management and retention; collaborate with Marketing to understand client success stories, with the Product team to shape the platform road map, and with the Insights team to develop CEM best practices; and perform financial management and reporting, including profit and loss reporting.

¹⁵ Further, the screenshots in the record from Glassdoor.com do not state how many users reported their salaries to make its findings, which limits the data's evidentiary value.

The information from Glassdoor.com indicates that the range of base salaries for computer and information system managers (all industries) with 7 to 9 years of experience is \$85,000 to \$152,000; the material from Indeed.com shows the range of base salaries for computer and information system managers is \$58,811 to \$182,597.¹⁶

While the Petitioner argues that the Beneficiary's total compensation is considerably higher than the base salary figures reported by the BLS, FLC, Glassdoor, and Indeed resources, we note that the Petitioner did not provide supporting evidence that would allow a comparison between the Beneficiary's total remuneration and that of other similarly employed workers in his geographic area. Therefore, the evidence does not establish that he receives total remuneration that is "significantly high."

Finally, the Petitioner submitted the average household income of residents in the [redacted] California area; however, this regulatory criterion requires that an individual commands a high salary in relation to others in the field rather than comparing the wages to the overall workers in the geographic area. For the reasons discussed above, the Petitioner has not established the Beneficiary has commanded a high salary or other significantly high remuneration in relation to others based on his earnings with the Petitioner.

B. Final Merits Determination

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documentation showing that the Beneficiary meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve the final merits determination.¹⁷

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Beneficiary has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). See also *Hamal v. Dep't of Homeland Sec. (Hamal I)*, No.

¹⁶ The information from Indeed shows that only nine salaries were reported for this survey. This relatively small sample size limits the data's evidentiary value. See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(I) (stating that some websites that rely on user-reported salary data may not provide a valid comparison if, for example, too few users reported their salaries, which may impact the reliability of the data).

¹⁷ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown the significance of the Beneficiary’s work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Beneficiary has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Beneficiary among the upper echelon in his field.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary’s eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.